



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2003

Mr. Bradley Randall
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2003-5556

Dear Mr. Randall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185631.

The City of Garland (the "city") received two written requests from the same individual for certain categories of information in connection with the requestor's arrests on May 21 and 22, 2003. You state that some of the responsive information has been released to the requestor.

We also note that this office has previously ruled on the extent to which the "detailed description of the offenses for which an arrest occurred on May 22, 2003" is subject to required public disclosure. *See* Open Records Letter No. 2003-4472 (2003). Therefore, because the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, the city may continue to rely on that ruling as a previous determination for purposes of section 552.301 of the Government Code.¹ Accordingly, we need not further address the public nature of that information. *See* Open Records Decision No. 673 (2001). You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 552.108 and 552.1175 of the Government Code.

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

We note at the outset that the only arrest report and "Field Investigation Report" (the "reports") you submitted to this office pertain to an incident that occurred on May 22, 2003. We therefore assume that the reports pertaining to a May 21, 2003 incident have been released to the requestor, to the extent such records exist. If they have not, the city must release those reports at this time. See Gov't Code § 552.301, .302.

You first contend that the highlighted portions of the reports you submitted to this office are excepted from public disclosure pursuant to section 552.108. Please note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement records that pertain to criminal investigations and prosecutions *that have concluded* in a result other than a criminal conviction or deferred adjudication. However, based on your representation that the submitted arrest reports relate to a pending criminal prosecution, we conclude that in this instance you have met your burden of demonstrating the applicability of section 552.108(a)(1). We therefore conclude that, except for the "detailed description" contained in the offense report, the release of which is governed by Open Records Letter No. 03-4472, the city may withhold the highlighted information in the submitted reports pursuant to section 552.108(a)(1) of the Government Code. *But see* Gov't Code § 552.108(c) (section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime"); *see also Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (outlining types of information required to be released under *Houston Chronicle*).

You next contend that police officers' social security numbers are excepted from public disclosure pursuant to section 552.1175. In this instance, however, we believe the more applicable exception is section 552.117(a)(2), which requires the city withhold, among other things, the social security number of "a peace officer as defined by Article 2.12, Code of Criminal Procedure." Unlike non-peace officer public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). The social security numbers you have highlighted must be withheld from the public pursuant to section 552.117(a)(2). The remaining submitted information must be released to the requestor, except as discussed above.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CMN/RWP/sdk

Ref: ID# 185631

Enc: Submitted documents

c: Mr. Fred Slice
2406 Diamond Oaks
Dallas, Texas 75044
(w/o enclosures)